

**Westbank Asbestos Site
TOLLING AGREEMENT**

This *Westbank Asbestos Site Tolling Agreement* ("Agreement") is entered into between the United States of America ("United States") and Johns Manville (f/k/a Johns Manville International, Inc., Schuller International, Inc., and Manville Sales Corporation) and Johns Manville Corporation (f/k/a Schuller Corporation and Manville Corporation) (collectively referred to as "Johns Manville").

The Parties to this Agreement wish to defer any formal proceedings on any claims concerning response costs that the United States alleges it incurred at the Westbank Asbestos Site located in Jefferson Parish and Orleans Parish, Louisiana ("Site") without thereby altering the claims or defenses available to the parties. Therefore, in consideration of mutual covenants set out herein, the parties to this Agreement stipulate and agree as follows:

1. The Site is an Additional Site under the *Stipulation and Order of Settlement and Dismissal* entered as an Order by the United States District Court for the Southern District of New York ("Court") on October 28, 1994 in Manville Corporation et al. v. United States, Docket No. 91 Civ. 6683 (RWS) ("Global Settlement Order"),

2. The United States contends that presently it has a cause of action pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607 and 9613, that it would assert against Johns Manville under the Global Settlement Order for, *inter alia*, recovery of response costs incurred by the United States relating to the Site. The United States also contends that it may also have a related civil claim under CERCLA Sections §§ 107 and 113 that it would assert against Johns Manville under the Global Settlement Order for the incurrence of costs and damages for injury, destruction, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss. These claims are collectively the "Tolled Claims."

3. The United States and Johns Manville are entering into this Tolling Agreement in order to pursue a good faith effort to settle the legal claims alleged herein by the United States. It is the goal of both parties that any settlement of this matter will be consistent with the provisions of the Global Settlement Order.

4. This Agreement does not constitute in any way an admission or agreement on the part of Johns Manville that any claim asserted against it would be timely, or that Johns Manville is liable in any way with respect to the Site.

5. This Agreement does not constitute any admission or acknowledgment on the part of the United States or Johns Manville that any statute of limitations is applicable to any claim or portion thereof asserted by the United States with respect to the Site and currently authorized pursuant to any provision of CERCLA.

6. Johns Manville agrees that the time between and including December 15, 2002 and August 11, 2009 ("the Tolling Period") will not be included in computing the time limited by

any statute of limitations that may be applicable to the United States' claims against Johns Manville under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, with respect to the Site. Johns Manville agrees that any applicable statute of limitations with respect to the United States' claims under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, shall be tolled during the Tolling Period and agrees not to assert, plead, or raise against the United States in any fashion, whether in proceedings under the **Global Settlement Order** or otherwise, any defense or avoidance based on the running of any statute of limitations during any portion of the Tolling Period with respect to the Tolled Claims. Similarly, Johns Manville agrees that the Tolling Period, or any portion thereof, shall not be used to raise the defense of laches, concerning the United States' timeliness in asserting its claims for the recovery of response costs or natural resource damages at the Site.

7. The United States reserves all of its rights under applicable law, except as otherwise set forth in this Agreement or in the **Global Settlement Order**, including but not limited to, Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607, against Johns Manville. Johns Manville reserves all of its rights under applicable law, except as otherwise set forth in this Agreement or in the **Global Settlement Order**, including but not limited to, Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607, against the United States and any other party.

8. Johns Manville reserves all rights and defenses which it may have, except as specifically set forth in this Agreement or the **Global Settlement Order**, to contest or defend any claim the United States may assert or initiate against it. This Agreement is not an admission of law or fact or of liability on the part of Johns Manville. Except for the provisions of Paragraph 1, *supra*, neither this Agreement nor anything contained herein shall be admissible in any civil or criminal proceeding in any manner whatsoever, except in the event that the statute of limitations or laches is raised as a defense or asserted by Johns Manville as to the Tolled Period in any proceeding as to the claims of the United States against Johns Manville under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, for the Site.

9. This instrument contains the entire agreement between the United States and Johns Manville regarding the temporary tolling of the statute of limitations as discussed herein, and no statement, promise or inducement not contained in this written agreement shall be valid or binding. Furthermore, this contract may not be enlarged, modified, or altered except in writing signed by all parties hereto.

10. Johns Manville shall preserve and maintain, during the pendency of the Tolling Period, and for a minimum of 90 days after termination of the Tolling Period, at least one legible copy of all documents and other materials subject to discovery under the Federal Rules of Civil Procedure and relating to the Tolled Claims, regardless of any corporate document retention policy to the contrary.

11. This Tolling Agreement is effective upon execution by Johns Manville and the United States, and without the requirement of filing with the Court, and may be signed in counterparts.


12. The undersigned representative(s) of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally

bind such party to all terms and conditions of this document. This Agreement shall be binding upon the United States and upon Johns Manville and its successors.

The United States of America consents to this Tolling Agreement by its duly authorized representatives on this _____ day of February, 2009.

Thomas Mariani
Assistant Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Johns Manville consents to this Tolling Agreement by its duly authorized representatives
on this 2d day of February, 2009.


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